

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

TAMPA ELECTRIC CO., a wholly-owned
subsidiary of TECO ENERGY, INC., d/b/a
TECO PEOPLES GAS

and

Cases 12-CA-144359
12-CA-152306
12-CA-167550

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO,
LOCAL UNION 108

**COUNSEL FOR THE GENERAL COUNSEL’S EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

On June 28, 2016, Administrative Law Judge Michael A. Rosas (“the ALJ”) issued a Decision in the above-captioned cases, properly finding that Tampa Electric Co., a wholly-owned subsidiary of TECO Energy, Inc., d/b/a TECO Peoples Gas (Respondent) violated Section 8(a)(1), (3) and (5) of the Act in all respects alleged in the Consolidated Complaint issued on February 16, 2016. The unfair labor practices found by the ALJ include the interrogation of employees about their union activities on behalf International Brotherhood of Electrical Workers, AFL-CIO, Local Union 108 (the Union) and promise of benefit to employees in order to encourage them to abandon their support for the Union, in violation of Section 8(a)(1) of the Act [ALJD 10:3 to 11:6; ALJD 14:6-11];¹ the discriminatory and unilateral withholding of regular annual merit wage increases for the years 2015 and 2016 from Respondent’s Sarasota, Florida unit employees, notwithstanding that Respondent paid 2015 and 2016 merit wage increases to all of its unrepresented employees, who, like the Sarasota unit employees, were not covered by a

¹ The ALJ’s Decision is referenced as ALJD (page:line), except page 1 thereof, which is referenced as ALJD 1 because that page has no line numbers. General Counsel’s Exhibits are referenced as GCX (number). The hearing transcript is referenced as Tr. (page number).

collective-bargaining agreement, in violation of Section 8(a)(1), (3) and (5) of the Act [ALJD 11:8-45; ALJD 14:13-16];² and the failure and refusal to furnish merit wage increase information to the Union which is relevant and necessary to the performance of its duties as the representative of the Sarasota unit employees, in violation of Section 8(a)(1) and (5) of the Act.

Pursuant to Section 102.46 of the Board's Rules and Regulations, Counsel for the General Counsel files the following exceptions to the Decision of the ALJ. The exceptions seek the inclusion in the Board's Decision and Order of appropriate remedial language and authorities that were omitted by the ALJ and the correction of two minor, inadvertent errors in the ALJ's Decision.

1. The ALJ erred by inadvertently omitting Case 12-CA-167550 from the caption of his Decision. [ALJD 1]. The charge and amended charge in Case 12-CA-167550, and the Order Further Consolidating Cases, Consolidated Complaint and Notice of Hearing, dated in Cases 12-CA-144359, 12-CA-152306 and 12-CA-167550 support this exception. [GCX 1(dd); GCX 1(gg); GCX 1(jj)]. Accordingly, the Board should add Case 12-CA-167550 to the case caption.

2. The ALJ inadvertently referred to employee Jonathan Sinkler as "Robert Sinkler" in his recommended conclusions of law. [ALJD 14:6-11]. The ALJ correctly named Jonathan Sinkler in his findings of fact. [ALJD 36-37; see also Tr. 14:22 to 15:8]. Accordingly, the Board should correct the name of Jonathan Sinkler in the conclusions of law.

3. The ALJ erred by recommending that Respondent be ordered to file a report allocating backpay to the appropriate calendar quarters with the Social Security Administration,

² Respondent decided not to pay the 2015 merit wage increases to the Sarasota unit employees on December 15, 2014, five days after the employees voted to be represented by the Union in a Board election held on December 10, 2014, but later paid them effective as of August 31, 2015, retroactive to December 22, 2014. [ALJD 5:14 to 7:32; ALJD 9:13-34]. In December 2015, Respondent withheld the 2016 merit wage increases from the Sarasota unit employees while the parties were still negotiating a first collective-bargaining agreement. [ALJD 9:36-43].

and by failing to recommend that Respondent be ordered to file a report for the Social Security Administration allocating backpay to the appropriate calendar years with the Regional Director for Region 12, as required by *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016). [ALJD 14:25-29; 15:33-34 and Appendix]. Accordingly, the Board should include language in the Remedy section of its Decision, and in its Order and Notice to Employees that is consistent with its Decision and Order in *AdvoServ of New Jersey*.

4. The ALJ erred by failing to include, in the Remedy section of his Decision, supporting authority for the monetary remedies included in his recommended Order and Notice to Employees, including backpay, interest, and compensation for adverse tax consequences. [ALJD 15:29-37]. Specifically, the ALJ failed to specify the following authorities for the computation of the monetary remedies for Respondent's unfair labor practices: *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F. 2d 502 (6th Cir. 1971), regarding the computation of the backpay, which is for merit wage increases; *New Horizons for the Retarded*, 283 NLRB 1173 (1987), regarding the interest rate on backpay; *Kentucky River Medical Center*, 356 NLRB *enf. denied on other grounds sub. nom. Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011), regarding the requirement that interest be compounded daily; and *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016) and *Tortillas Don Chavas*, 361 NLRB No. 10 (2014), regarding the compensation of employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards. Accordingly, the Board should include appropriate language and authorities for these remedies in the Remedy section of its Decision and Order.

For the reasons set forth above, Counsel for the General Counsel respectfully urges the Board to grant these exceptions in their entirety.

Dated at Tampa, Florida on July 26, 2016.

Respectfully submitted,

/s/ Caroline Leonard

Caroline Leonard, Esq.

Counsel for the General Counsel

Region 12, National Labor Relations Board

201 E. Kennedy Blvd., Suite 530

Tampa, FL 33602

Phone: (813) 228-2641

Email: caroline.leonard@nlrb.gov

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, Counsel for the General Counsel's Exceptions to the Decision of the Administrative Law Judge, was served on July 26, 2016 as follows:

By Electronic Filing:

Hon. Gary W. Shinnars
Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

By Electronic Mail:

Thomas M. Gonzalez, Esq.
Thompson, Sizemore, Gonzalez
& Hearing, P.A.
201 N. Franklin Street, Suite 1600
Tampa, FL 33602
tgonzalez@tsghlaw.com

Robert Thomas
International Brotherhood of Electrical
Workers, AFL-CIO, Local Union 108
10108 US Highway 92 East
Tampa, FL 33610
rthomas@ibew108.org

/s/ Caroline Leonard

Caroline Leonard, Esq.
Counsel for the General Counsel
Region 12, National Labor Relations Board
201 E. Kennedy Blvd., Suite 530
Tampa, FL 33602
Phone: (813) 228-2641
Fax: (813) 228-2874
Email: caroline.leonard@nlrb.gov